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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: EAC-99-277-53726 Office: Vermont Service Center Date: MAY 22 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:
[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenly
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as an assistant pastor.

The center director denied the petition determining that the petitioner failed to establish that the beneficiary had had the required continuous work experience as a minister during the two-year period immediately preceding the filing date of the petition. The director noted that there was insufficient proof of employment in the United States in 1998 and no corroborating documentation of the alleged employment abroad.

On appeal, counsel for the beneficiary argued that the director misinterpreted the evidence in concluding that the beneficiary was employed part-time in 1998 and explained that the Form W-2 Wage and Tax Statement noted by the director represented employment for only part of the year.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested; or

The petitioner is a newly formed church claiming a congregation of 150 members and 1998 revenues of \$216,5000. The petitioner claimed to employ the pastor and assistant pastor full-time, a chorus conductor full-time, four evangelists part-time, and a pianist and Bible instructor part-time. The beneficiary is a native and citizen of Korea who was last admitted to the United States on July 23, 1998 as a B-2 visitor. The record shows that beneficiary was granted a change of status to R-1 religious worker valid from February 8, 1999 to February 7, 2002. The petitioner seeks to employ the beneficiary at a salary of \$21,500 per year.

At issue in this proceeding is whether the petitioner has established that the beneficiary had been continuously working in a qualifying religious vocation for at least the two years preceding the filing of the petition.

The petition was filed on September 24, 1999. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of a minister since at least September 24, 1997.

The petitioner claimed that the beneficiary was employed abroad as an "assistant pastor" from March 1, 1993 through the date of admission into the United States. The petitioner also indicated that it employed the beneficiary since his entry into the United States in July 1998 even though employment was not authorized until February 1999. In support of the petition, the petitioner submitted an English language letter from the foreign church and

two tax forms reflecting the U.S. employment. The petitioner submitted a 1998 1099 Miscellaneous Income form for \$7,140 and a 1999 W-2 form for \$21,840.

The statute provides for three distinct classifications of religious workers: ministers of religion, professional workers, and other workers. Each has different eligibility requirements. For all three classifications the statute requires that the alien have been continuously carrying on the religious vocation or occupation specified in the petition for at least the two years prior to filing. Section 101(a)(27)(C)(iii) of the Act. In the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious denomination for the two-year period.

On review, it must be concluded that the petitioner has failed to satisfy its burden of proof. First, the petitioner failed to state the date the beneficiary was ordained as a minister and failed to submit any proof that he is authorized as a minister in the denomination.

Second, as noted by the director, the petitioner failed to submit any corroborative documentation of the beneficiary's employment abroad such as his tax records, licenses etc. The Service has no means to verify a simple letter allegedly submitted by a prior employer and has no means to determine whether the English-language copy is, in fact, the original document from the foreign employer.

Third, the petitioner failed to submit any additional evidence of the beneficiary's alleged employment in the United States such as his personal income tax records. It is noted that neither the W-2 form nor the 1099 Form equal the proffered wage stated in the petition and the petitioner offered no explanation of this discrepancy. Furthermore, there is no evidence that this was the beneficiary's sole employment either abroad or in the United States.

Fourth, the petitioner failed to submit any explanation of the unusual circumstances whereby the beneficiary left his employment and his native country, entered the United States claiming to be a visitor for pleasure, and immediately commencing employment with a U.S. church. Absent a credible explanation of the process whereby the petitioner hired the alien beneficiary, the Service will not accept a simple claim of employment with minimal documentation.

Counsel resubmitted copies of the W-2 and 1099 forms on appeal, but failed to submit any additional evidence that the director indicated in his decision would be necessary for favorable action on the petition. Accordingly, it must be concluded that the petitioner has failed to overcome the director's finding that it

failed to adequately establish either the foreign or the U.S. employment.

It is noted that the director reviewed the petition assuming that the position was for a minister. However, if the position of "assistant pastor" is, in fact, envisioned as a lay worker engaged in a religious occupation, the same determination finding insufficient evidence would apply.

The petitioner also failed to establish its ability to pay the proffered wage.

8 C.F.R. 204.5(g) (2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted internal 1998 budget statements and bank statements to demonstrate its ability to pay the proffered wage. These documents do not satisfy the documentary requirement. Furthermore, it is unclear how a church of 150 members could support the number of employees claimed by the petitioner.

In addition, the bank statements submitted into evidence are for the New York Dae Kwang Presbyterian Church in Staten Island, not the petitioning church in Little Neck. This discrepancy was not explained. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). Furthermore, even those bank statements show a monthly balance routinely less than \$1,000 which appears inconsistent with the petitioner's claimed annual revenues or ability to pay an additional full-time salary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.